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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 94-128
Open Network Architecture Tariffs)
of U S WEST Communications, Inc.) DOCKET FILE COPY ORIGINAL

**OPPOSITION TO APPLICATION FOR REVIEW
OF MCI TELECOMMUNICATIONS CORPORATION**

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to Section 1.115(e)(1) of the Federal Communications Commission's ("Commission") rules,¹ hereby files this Opposition to the Application for Review of MCI Telecommunications Corporation, ("Application") filed December 8, 1994, in the above-captioned docket. MCI Telecommunications Corporation ("MCI") requests review of the Common Carrier Bureau's ("Bureau") decision to apply the confidentiality procedures confirmed by the Commission in the SCIS Disclosure Review Order² to the identical cost model used to develop the same tariffs in the instant proceeding. At issue is the U S WEST Switching Cost Model ("SCM") and the

¹47 CFR § 1.115(e)(1).

²In the Matter of Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, Order, 9 FCC Rcd. 180 (1993) ("SCIS Disclosure Review Order"), pet. for recon. filed Jan. 14, 1994.

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highly sensitive vendor information which it utilizes to provide cost analysis for various switched services.

MCI's essential argument is that the SCIS Disclosure Order³ was wrongly decided. In fact, the main bulk of MCI's arguments consists of refileing old material dealing with the old proceeding. There is no sense in responding to these arguments in any detail. The information which is protected by the Order⁴ on review here is highly sensitive commercial information, including information which would give MCI a significant competitive advantage if it could obtain it free of any restraints. The Order provides reasonable and meaningful protection against misuse of this highly confidential material (much of which is not U S WEST's information, but information of switch manufacturers).

However, one argument continuously raised by MCI is so fundamentally in error that we feel constrained to respond lest, through the vehicle of unremarked repetition, it may gain some unwarranted credibility by default. MCI argues that it has a right to the confidential information in the U S WEST SCM which rises to a constitutional level.⁵ In making this argument, MCI relies on court decisions

³In the Matter of Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, Memorandum Opinion and Order, 7 FCC Rcd. 1526 (1992).

⁴In the Matter of Open Network Architecture Tariffs of US West Communications, Inc., CC Docket No. 94-128, Order Designating Issues for Investigation, DA 94-1236, rel. Nov. 8, 1994 ("Order").

⁵Application at 7-8.

dealing with reasoned decisionmaking in the context of a rulemaking⁶ and an administrative hearing.⁷ MCI concludes therefrom that protection of confidential information in a tariff proceeding violates "the Communications Act, the Administrative Procedure Act and Constitutional Due Process."⁸

Of course, it has long been the law that no private party is granted the right to see confidential information submitted in support of a tariff.⁹ And certainly even the cases cited by MCI do not even hint that MCI has a constitutional right to confidential information of its competitors. As the marketplace becomes increasingly competitive, the amount of harm which MCI will be able to do with U S WEST's own confidential information will dramatically increase. The competitive harm which could be wreaked with the vendor information which MCI also seeks is already extremely significant. The Commission must recognize that, at least as long as it requires cost support for tariff filings, competitively sensitive information will increasingly be filed with tariffs -- on a routine basis. The Commission should

⁶Id. at 8, citing to American Lithotripsy Soc. v. Sullivan, 785 F. Supp. 1034 (D.D.C. 1992).

⁷Id., citing to U. S. Lines v. Federal Maritime Commission, 584 F.2d 519 (D.C. Cir. 1978).

⁸Id. at 7.

⁹See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538 (1970); Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1235 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981).

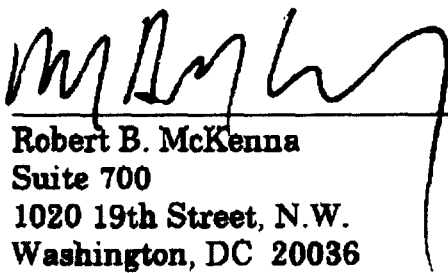
advise MCI firmly that, in accordance with long-standing judicial precedent and the public interest, MCI has no legal right at all to seek such confidential information.

MCI's Application for Review should be denied.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

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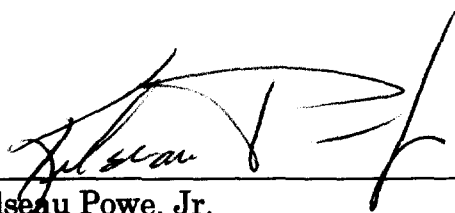
Its Attorney

Of Counsel,
Laurie J. Bennett

December 23, 1994

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 23rd day of December, 1994, I have caused a copy of the foregoing **OPPOSITION TO APPLICATION FOR REVIEW OF MCI TELECOMMUNICATIONS CORPORATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

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